

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

11 CR 005 (SLT) (S-1)

- against -

NOTICE OF MOTION

BARTOLOMEO VERNACE, *et al.*

Defendants.
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PLEASE TAKE NOTICE, that upon the annexed affirmation of Joseph DiBenedetto, duly sworn to on the 27th day of December, 2011, the indictment, and all other proceedings heretofore had herein, the defendant BARTOLOMEO VERNACE, will move this Court, by his attorneys, before the Honorable Sandra L. Townes, United States District Court Judge, for the Eastern District of New York, at the United States Courthouse, located at 225 Cadman Plaza East, Brooklyn, New York, at a date and time to be fixed by the Court, for an ORDER:

- I. Dismissing Racketeering Acts Two and Three of Count One based on the government's unjustified pre-indictment delay and because the charged conduct does not "relate" to the charged enterprise;
- II. Dismissing Racketeering Act One of Count One because the charged conduct does not "relate" to the charged enterprise and based on the government's unjustified pre-indictment delay;
- III. Dismissing Count Two because the statute of limitations prevents prosecution;
- IV. Striking the alias "Pepe" from the indictment;
- V. Suppressing the conversation between Pepe, Pauline Frank and Anthony Cuccio;
- VI. Requiring the government to provide a witness list;

VII. Requiring the government to preserve all notes of law enforcement interviews with witnesses;

VIII. Compelling the government to produce “enterprise proof” and 404(b) evidence sufficiently in advance of trial;

IX. Compelling the government to provide a list of recordings and other exhibits that they intend to introduce at trial;

X. Compelling the government to produce government cooperators in open court to permit counsel to ask each whether he/she will consent to be interviewed by defense counsel;

XI. Requiring the government to provide to defense counsel any reports of any scientific tests, examinations, or analyses that the government conducted in relation to this case;

XII. Granting permission to join in the relevant motions of co-defendants;

XIII. Granting leave to file additional motions; and

For such other and further relief this Court deems just and proper.

Dated: December 27, 2011
New York, New York

Respectfully Submitted,

/s/
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Attorney for Bartolomeo Vernace

cc: All counsel of record *Via ECF*